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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT,

Petitioner,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, WILLIAM D. REMMELL, TRUSTEE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

SAMUEL E. COOK,
WM. LEMKE,
Counsel for Petitioner.

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To the Honorable Charles Evans Hughes, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Preliminary.

Your petitioner, James M. Wright, a citizen of the United States, residing in Jay County, Indiana, respectfully shows:

That he is aggrieved by a judgment of the Honorable United States Court of Appeals for the Seventh Circuit.

That the opinion of said court in said cause was filed in the office of the Clerk of said court on November 3, 1939 (R. 153-157).

That judgment was duly rendered against the petitioner on said opinion (R. 157).

That the petition for a rehearing herein was filed on November 18, 1939, and denied on December 21, 1939, and said judgment runs from said last-named date (R. 157, 158).

That said Court of Appeals in its opinion affirmed a judgment of the United States District Court for the Northern District of Indiana, Fort Wayne Division (R. 153, 157).

That said District Court refused to allow the petitioner to redeem the land herein at its appraised value and refused to give him the relief provided for in subsection (s) of the Bankruptcy Act of August 28, 1935, but ordered it sold at public auction and allowed said creditor to bid its debt at said sale (R. 57-59).

Your petitioner presents his petition to the Supreme Court of the United States for a Writ of Certiorari requiring said Circuit Court of Appeals to send up the record in said cause and prays that said judgment be reversed.

That he files with this petition and brief in support of the same the original record, Volumes 1 and 2 on file in said Court of Appeals and a transcript of the proceedings therein duly certified by the clerk of said court. That heretofore the petitioner has filed in this Court his affidavit to prosecute this appeal *in forma pauperis* and he prays the Court to file and docket his petition, and affidavit and said record and transcript and that they be heard upon said record, transcript and affidavit and his typewritten petition and brief in support of said petition and such brief as may be filed by the respondents.

I.

Summary and Short Statement of the Matters Involved.

The material matters, leading up to the decision of the Court of Appeals are in substance as follows:

(1) This is a proceedings in bankruptcy under Section 75 of the Act of March 3, 1933 for Agricultural Compositions and Extensions and its amendments and amended subsections (s) of the Act of August 28, 1935 and its extensions (11 U. S. C. A. 203 (s)).

(2) Petitioner is the same debtor and the same 200-acre farm which was before this Court in *Wright* v. *Union Central Life Insurance Company*, 304 U. S. 502, 82 L. Ed. 1490-1502.

In the latter this Court overruled the Court of Appeals and held this land was in bankruptcy and among other things held that Congress had the power to extend the State statutory period of redemption from one year to three years. It also held Congress intended by these Acts to rehabilitate the insolvent farmer and discharge him from his oppressive indebtedness.

(3) After the case came back to the District Court the respondent, the Union Central Life Insurance Company commenced over again against the debtor. Pardon a digression.

Although the Supreme Court held in the recent *Kalb* case, 308 U. S. 433, 84 L. Ed. 281 that:

> "Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal Court litigation." * * * "that these (Conciliation) Commissioners should upon request assist any farmer in preparing and filing a petition under this section and

in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an Attorney in any proceedings under this section." (47 Stat. 1473 (q).)

Then this Court adds:

> "In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved after filing a petition for composition and extension of the necessity of litigation elsewhere and its consequent expense."
>
> *Kalb* case, 84 L. Ed. 281.

(4) Contrast this with the conduct of the creditor as shown by the record in this cause. It has waged bitter litigation against the debtor to defeat rehabilitation and deprive the debtor of the benefits of this remedial Act for over five years, before the Conciliation Commissioner, in the District Court, in the Court of Appeals, in the Supreme Court of the United States. When defeated there and the cause comes back to the District Court it is started over again, in the District Court, the Court of Appeals and in the Supreme Court.

It has paid no attention to this law but has trampled it down and defeated the purpose of Congress to rehabilitate this "distressed farmer debtor" on the basis of the present value of the land—$6000.00 and discharge him of the other $10,000.00 of the debt.

Besides this admonition of Congress the Supreme Court in this case on the former appeal held that the Federal courts may enjoin action by the mortgagee which would defeat the purpose of Congress to rehabilitate the farm mortgagor.

Wright case, 82 L. Ed. 1490 (1501).

(5) Is it not remarkable that with all of this illegal action to defeat rehabilitation no inferior Federal court has raised

its hand to enjoin this great corporation? It will not be denied but that it also paid no attention to this appeal but proceeded to sell the land under the judgment herein.

It is now resisting the debtor's petition for a writ and is also asking this Court to approve of its conduct in defeating the purposes of this Act of Congress.

(6) To return. On July 22, 1938, this creditor opened up all along the line again by filing a petition in the District Court in which it set up that in October, 1934 the debtor had filed his original petition and schedules in bankruptcy herein under Section 75 of the Bankruptcy Act as amended, that at said time it held a debt secured by a mortgage for $9000.00 against the 200 acres of land (in Jay County, Indiana) described therein as follows to-wit:

> "The Southeast Quarter (SE¼) of Section 31, Township 24 North, Range 13 East; also the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of Section 31, Township 24 North, Range 13 East, containing in all 200 acres, more or less." (R. Vol. 1; 22.)

(7) That it had filed its complaint for judgment on said note and to foreclose said mortgage in the Circuit Court of Jay County, Indiana against said debtor. That such proceedings were had. That afterwards it recovered a personal judgment of $11,975.11 and a decree of foreclosure. That afterwards on July 20, 1935 said real estate was sold, and was bid in by said creditor for $12,174.31, being the full amount of the debt at said sale and received a certificate of sale from said sheriff and that on July 20, 1936 it received a deed from said Sheriff for said property which was duly recorded in the Recorder's Office of Jay County, Indiana (R. 19).

(8) That thereafter on October 11, 1935, said debtor filed his amended petition for relief under Section 75 subsec-

tion (s) of the Bankruptcy Act as amended August 28, 1935, and was duly adjudicated a bankrupt thereunder. That the Supreme Court of the United States has since held that the above described real estate came into the jurisdiction of the District Court and subject to the terms of said last-named amendment (subsection (s) of August 28, 1935) (R. 20).

(9) That at the time of filing said original petition in bankruptcy the same was referred to the Conciliation Commissioner of said Jay County, Indiana and a trustee was appointed to collect the 2/5 of all crops harvested thereon to be delivered by said debtor to said trustee (R. 20).

(10) That said creditor then proceeded to state in substance the following reasons for ending the stay in said cause and ordering said land sold at public sale:

(a) That the debtor has not repaid any part of the principal of said debt.

(b) That said debtor has not paid any interest on said loan after October 1, 1930.

(c) That said debtor has paid no taxes on said land since 1932.

(d) That said debtor has sold and retained the entire proceeds of all crops harvested on said land since said loan was made.

(e) That said debtor has lived upon and enjoyed the full benefit of said land since said loan was made.

(f) That said debtor announced to said trustee and Conciliation Commissioner that he intended to hold all crops harvested on said land until the final determination of the validity of said section 75 (s), if upheld he would turn over 2/5 of said crops and if not he would keep everything.

(g) That said debtor defaulted in the payment of principal, interest, insurance and taxes and failed to redeem from said foreclosure sale (R. 21).

(h) Said debtor has not been released or discharged from the personal judgment of $11,975.11.

(i) That said debtor has been adjudicated a bankrupt and is insolvent, his liabilities being far in excess of his assets and he has no other income whereby he may expect to liquidate or reduce said liabilities.

(j) That said debtor's financial condition is beyond all reasonable hope of rehabilitation and this Court cannot afford him any relief whereby rehabilitation can be effected.

(k) That said debtor has made no good faith offer of extension and composition herein, has not bid or offered to pay any rental for the occupancy of said land.

(l) That said debtor's financial condition has not improved nor has he made any good faith effort to relieve the creditor beginning with the filing of his amended petition under Section 75 (s) of August 28, 1935 (R. 22).

(m) That said debtor has already enjoyed the moratorium of more than 7 years taking the full benefit of the proceeds of said real estate.

(n) That said debtor has failed to maintain and care for said land, the ditches thereon, the buildings and fences since the making of said loan and has permitted the same to fall into disrepair, thereby greatly depreciating the value of said security.

(o) That the debtor has disposed of all of the crops from said land and is retaining the proceeds therefrom.

(p) That said debtor has failed to compromise and satisfy said loan of October 1, 1925 on a basis and through

sources available to him and acceptable to your petitioner and is otherwise displaying lack of good faith (R. 22).

(11) That under Section 75 subsection (s) of August 28, 1935, the creditor is entitled to the following relief in substance:

(a) That the total amount of the debtor's indebtedness is in excess of $14,000.00 (R. 23).

(b) That by reason of the failure of the debtor to pay said taxes the creditor had paid $1,500.00 for taxes and insurance premiums to protect said real estate.

(c) That in the foreclosure of said mortgage the creditor has expended large sums of money for costs, stenographic fees, attorney's fees, and other expenses which has not been repaid.

(d) That the debtor is financially unable to repay said loan and the interest thereon and the amount advanced by your petitioner for taxes and insurance premiums and said costs and expenses.

(e) That the creditor has received no part of the benefit of said crops.

(f) That the money loaned by the petitioner is invested for the benefit of policy holders who intrusted their money to it.

(g) That under the laws of Ohio and Indiana and other States the creditor is required to assure a minimum interest income and is obliged to protect said investment (R. 23).

(h) That by reason of said defaults the creditor is being greatly injured and the value of said security has seriously depreciated.

(12) Wherefore the creditor prayed the Court in substance:

(1) That said proceedings under Section 75 (s) as amended August 28, 1935, be dismissed as to said real estate.

(2) That all injunctions and restraining orders preventing the creditor from proceedings in accordance with said foreclosure proceedings be vacated.

(3) That said lease be held null and void.

(4) That the creditor should be given immediate possession of said land.

(5) That said sheriff's deed to said creditor for said real estate be held valid.

(6) In the alternative, directing an immediate sale of said real estate to be fixed by the court (R. 24).

(13) It will be shown later that all of said alleged reasons for ending the stay and ordering the sale, except the one as to the payment of the rent, were merely pleading conclusions and the law instead of pleading facts, and that the Supreme Court in the Bartels and Kalb cases have recently held that said other alleged reasons set out above are not provided for in said subsection (s) and hence should be excluded in the consideration of the question as to whether said land should be ordered sold at public sale.

(14) That as to said statement as to the rent the same is wholly untrue. That said rents covered the periods of 1936, 1937 and 1938. That for the year 1936 said Trustee received for the wheat the sum of $400.00. That the corn crop for the year 1936 in the sum of about $350.00 was used to pay for the cost of reroofing and repairing the dwelling house. That it was necessary that said house should be re-

paired to save it. That for the season of 1937 there was no wheat raised on said land but that 2/5 of the corn crop is now in the crib on said farm and said Trustee can take it away at any time. That said creditor is entitled to about 740 bushels of the corn crop of 1938. That it has not been matured or gathered yet and that said Trustee can get it at the proper time (R. 40-41).

(15) That the debtor will show below that all of said other alleged reasons are not reasons at all and should be eliminated and excluded from any consideration herein, and it was error to base the judgment on them.

(16) That said demand to terminate said stay and order said real estate sold at public auction and allow said creditor to bid the full amount of its debt was met by an answer of the debtor to the effect: That he now request said Court to cause said real estate to be appraised or to set a date for hearing on said question and after hearing evidence as to its value to fix said value in accordance with the evidence and to enter an order allowing the debtor to redeem said land at said appraisement and to order said land turned over to him free and clear of said mortgage debt (R. 42-43).

(17) That the finding hereinafter set out will show that said court wholly ignored said issue and failed to make any finding on said answer.

(18) That said debtor further charged that the "long train" of resistance to these remedial Acts of Congress—"evince a design" to overthrow said remedial Acts of Congress and deprive him of the benefits of the same and to defeat the purposes of Congress in enacting them which was to save farm homes and not confiscate them (R. 44).

(19) That said creditor knows that its debt is double the appraised value of said land, that at such a sale it intends

and will bid the amount of said debt and that means it would be utterly impossible for him to refinance said debt on said basis and redeem from such a sale. And that he cannot redeem his land except at the appraised value thereof (R. 48).

(20) That the debtor also filed an answer of former adjudication. That the questions presented in said creditor's petition as set out above were all litigated or might have been litigated in said first appeal and that said judgment of the Supreme Court that said 200 acres of land was in bankruptcy was final and conclusive and that said creditor could not relitigate the effect of said mortgage foreclosure and Sheriff's sale and other matters in its new action herein (R. 50-53).

(21) We will now proceed to eliminate the facts found by the court which are not reasons for forfeiting the land or which would authorize the court to terminate the stay and take the land from the debtor and order it sold.

(1) The first fact found by the court relays to the foreclosure proceedings in the Adams Circuit Court and the Sheriff's sale on July 20, 1935 and the Sheriff's deed dated July 26, 1936. This fact was before the Supreme Court in the other appeal and notwithstanding the Sheriff's deed the court held that this did not give any title to the creditor but that the title was still in the debtor and that the land was within the jurisdiction of the bankruptcy court. This is not all. In the recent case of *Kalb* v. *Feuerstein*, 84 L. Ed. 281, the Supreme Court held that such proceedings to foreclose mortgage and sell the real estate in the State courts were utterly void and that the same did not bind the debtor and the judgment could be set aside at any time by collateral attack and that it gave the creditor no title whatever and did not deprive the debtor of the benefits of this remedial act. Hence, the judgment of the Circuit Court of

Appeals could not rest upon the judgment of foreclosure and Sheriff's sale and deed, and that part of the finding should be excluded and not considered (R. 54).

(22) The court next found that the debtor had not made any offer of composition or extension as provided by the bankruptcy law. That alleged cause had been held unavailing in the case of *Bartels* v. *John Hancock, etc.*, 100 F. (2d) 813 (816), in which the court said:

> "That Bartels in this case had no plan to present to his creditors except to offer to go to work personally on the farm with his grown son, and to apply presently to his secured debt what he could raise by selling some mercantile property and vacant lots, hoping to pay all in full finally, does not require the dismissal of his proceedings." Bartels case, 84 L. Ed. 154 (R. 54).

(23) Besides this there is no evidence in the record which supports the finding of the court. The creditor testified that he had offered them $8000.00 (R. 131-132) at the first creditor's meeting. The record and the evidence also shows that the creditor's counsel, Roscoe D. Wheat, was present at the first creditor's meeting and that he did not raise any question at that time that the debtor had made no offer of composition (R. 1-2). That afterwards said counsel filed two petitions requesting the court to strike the real estate from the schedules and thereby recognized that it had waived the objection that the debtor has made no offer at the first creditor's meeting. If there was no such an offer it was the duty of said counsel to object to proceed any further at said first creditor's meeting. And the fact that he filed these two petitions and did not raise that question and the fact that it was litigated in the District Court and the Court of Appeals and in the Supreme Court and that the question was not raised in either of said courts and that it never was raised until the filing of the creditor's

petition herein on July 22, 1938, conclusively shows that the objection was entirely too late. Failure to raise the question at the first creditor's meeting was a waiver of the objection and precluded the creditor from presenting it afterwards. Hence the judgment could not be based on that (R. 3, 8, 10, 15).

(24) Besides this, if no such offer was made it would show lack of "good faith" and this court in the *Bartels* case held that this act contained no provision making that a cause of dismissal or ordering the land sold. *Bartels* case, 84 L. Ed. 154.

(25) The alleged finding that the debtor declined to turn over the rent unless the act was held valid; and he received some benefit from the act, if true, would not be cause for ordering the land sold and deprive him of the benefits of the act. Besides this the evidence shows he paid all of the rent except the corn produced in the season of 1936, which was used to repair the dwelling house. The act provides the rent shall be used to pay taxes and repairs of this house and the creditor did not offer a syllable of evidence to deny but that the roof and other parts of the house were out of repair and that they needed the repairs put on them. There would be no actual difference in paying the rent to the trustee and having him repair them, or the debtor doing the repairs and paying it out of the rent and paying the balance to the trustee. This contention was another effort to defeat this Act of Congress. The crop of 1936 was turned over to the trustee except what was used to pay for the repair of the house (R. 132-133).

The debtor told the trustee about making the repairs and he said nothing (R. 133).

The repairs were necessary to save the house. It leaked like a sieve. Leaked all over and plastering had fallen off (R. 133).

And it took the corn to pay for this (R. 133).

The trustee's share of the corn for 1937 is stored on the farm and I told the trustee it was there (R. 133).

Debtor gave him the wheat for 1938 and the corn is growing and not harvested (R. 134).

(26) The finding of the court that the principal, interest and taxes had not been paid and that the buildings were not kept in repair are not causes to end the stay and order the land sold and deprive him of the benefits of the act and it was error to base the judgment on this (R. 55). *Bartels* case, 84 L. Ed. 154.

(27) The court found the land was only worth $6000.00 (R. 55).

(28) The total debt has increased to $16,000.00. This gave the court no right to order the land sold and deprive the debtor of the benefits of this Bankruptcy Act (R. 55).

(29) The finding that the debtor could not refinance himself, and that there is no reasonable hope of rehabilitation, has been held in the *Bartels* case as no cause for depriving him of the benefits of this act.

Hence, it was error to base the judgment on that and order the land sold at public auction, and thereby deprived the debtor of the benefits of this act. *Bartels* case, 84 L. Ed. 154.

(30) A strange thing: The court found the debtor had refused to obey the orders of the court to make semi-annual payments (R. 56).

There is not a word nor a line in the record that any such an order was made. We now state none was ever made, and that the creditor will not deny this statement. Hence, the court erred in basing its order of sale on that.

(31) The order of sale is in the record, pp. 57-59.

That the court provided in said order that the creditor should have the right to bid the amount of its debt at said sale (R. 58).

Such an absurdity. The court knew when it made an order that the creditor could bid $16,000.00 for the land that the court found was worth only $6000.00 it was defeating the purposes of Congress in enacting this remedial act. A boy ten years old could see through that. That such an order made it utterly impossible for him to redeem or save his home, that he could not pay $16,000.00 for $6000.00 worth of land and that no loan company would ever finance him on such a basis as that. Congress never intended the court should make such an order as that. I do not care what may be said to uphold it no Court of Equity has the right to make such an order as would take this land from the debtor and turn it over to the creditor because he could not pay $16,000.00 for land worth only $6000.00.

That is in reality the only question in this case. The Court of Appeals dodged the question by refusing to make any finding on the debtor's cross-complaint. It had no right to refuse that because the debt was $16,000.00 and the only asset the debtor had was the value of the land—$6000.00. Say what you may, if Congress does not have the power to say that the debtor may redeem at $6000.00 and discharge the balance of the debt, then its bankruptcy powers amount to nothing in hundreds of thousands of cases as this. It was the duty of the District and the Court of Appeals to have disregarded the second proviso of paragraph (3) and not used it to defeat the first two clauses—the debtor's right to save his home on the basis of its present value.

If that is not the law then hundreds of thousands of "distressed farmer-debtors" will be driven from their homes, as helpless as lambs and go down the lane for the last time and turn their eyes from the homes of their

ancestors. It cannot be that that is the law. No, it never should be and never will be.

The Court of Appeals had no right to base its decision on such an inhuman construction of the law as that.

It has been said in substance: "that in the structure of government the man must be placed above the dollar."

The record shows this debtor has done everything he could to comply with this law. That hence, he is entitled to its benefits. On the other hand it shows that this loan company has "Turned Heaven and Earth" to defeat the purposes of Congress to rehabilitate this "distressed farmer". Its conduct instead of being approved should be rebuked.

II.

Reasons Relied On for Granting the Writ of Certiorari.

(1) As we have shown above the rent for the first year, 1936, was paid and used in repairing the dwelling house which was necessary and added to the value of the security, and the Creditor offered no evidence to the contrary. Hence, admitted it. That the only crop for 1937 was corn and creditor's share of the rent was stored on the farm at the time of the trial in October, 1938. That the Trustee got his share of the wheat for 1938 and the corn crop was not ripe but was on the farm not gathered in October, 1938 the time of the trial, hence, this alleged cause should be eliminated and the court had no right to order a sale on account of the crops.

(2) Conceding for the sake of the argument that there was some part of the crops not delivered to the Trustee, it was there on the farm and even though part of it was used to save the dwelling house that would not be ground to forfeit the land and order the land sold, as against the debtor's request to have the land appraised and give him the right to redeem it at its present value.

(3) It is clear that this Act cannot be properly construed or understood without heeding the statement of this Court in the *Kalb* case, namely:

> "Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation."

Other parts of the opinion in that case clearly show that the whole power and control of the debtor's property was vested in the District Court as a Court of Equity and Conscience to be administered according to equitable rules. In that view of it we contend that Congress never intended that the right to be rehabilitated on the basis of the value of the security and be discharged of the balance of the debt was ever to be defeated by any action of the creditor. That in a direct conflict at the same time between the alleged right to sell the land for disobedience of an order as to payments of rent and the right of the debtor to redeem his land and have the benefits of this Act, the alleged rights of the creditor would have to give way and yield and the right of the debtor to redeem should have the preference.

That in a direct conflict between the right to collect the rent and the debtor's right to redeem the first would be subordinate and secondary to the latter. That in a Court of Equity the latter could grant the right to redeem and provide that any deficiency in the rent should be paid by the debtor in addition to the present value of the land.

That the court should not have declared a forfeiture of the land when the small amount of rent could be disposed of in another way. Forfeitures are odious and not favored in law or equity and will not be enforced, except when there is no other remedy. Where there is another remedy the demand for a forfeiture should be refused by the court.

(4) Hence, the action of the Court of Appeals in enforcing this forfeiture and taking the land from the debtor and requiring that he pay $16,000.00 for $6000.00 worth of land was unconscionable. It violated the intent of this Act and defeated rehabilitation and is in direct conflict with the construction given it by this Court in the *Kalb* case, 84 L. Ed. 154.

And we will show it also conflicts with the decision in the *Gray* case in the Court of Appeals for the 6th Circuit wherein that court held the lien debt was of no more value than the value of the land, and is in conflict with the decision of the Supreme Court in this case in the former appeal and in conflict with all of the decisions of this Court on the question and in conflict with all of the standard authors on statutory construction.

(5) It therefore follows that the District Court and the Court of Appeals failed and neglected to construe this Act as intended by Congress and allowed the creditor to use it to take the debtor's land from him and thereby defeat the purposes of Congress. And that the sole question on this point is as to the proper construction of said Act of Congress and calls for the exercise of the supervisory power of this Court over the inferior Federal courts.

This opinion is found in 108 F. (2d) 361-3 (Pamphlet).

(6) The first finding of the court that the creditor foreclosed its mortgage in the State court as set out above. That the land was sold at sheriff's sale and bid in by the creditor and that a deed was issued to it, did not vest any title in the creditor, and did not deprive the debtor of relief in bankruptcy under this Act and was no reason which authorized the court to refuse the debtor's demand to redeem the land at its present value and end the stay and order it sold at public auction with the right to bid its whole debt of $16,000.00. (It will not be denied but that it did

bid it in for said debt at the trustee's sale on March 9, 1939.)

This decision of the Court of Appeals in approving such a sale, is in direct conflict with the decision of this (the Supreme Court) in the *Kalb* case. In that case this Court held that the proceedings herein foreclosing said mortgage and the action of the sheriff in selling the land on said decree and the deed to the creditor all were null and void and of no effect in law.

Kalb v. *Feuerstein*, 84 L. Ed. 281.

(7) This brings the decision of the District Court based upon such a finding and Court of Appeals in approving it in conflict with the decision of this Court in said *Kalb* case.

(8) The finding of the court as set out above that the debtor had made no offer of composition (not acted in good faith) and basing the judgment on that is in direct conflict with the decision of the Court of Appeals in the 5th Circuit in the *Bartels* case in which that court held that no formal offer was required. The filing of the petition gave the court jurisdiction and it retained it even though no formal offer was made. The court was required to administer the estate regardless of the kind of an offer that was made so held in effect in the *Kalb* case in this Court.

Bartels v. *John Hancock*, 100 F. (2d) 813 (815-816);
John Hancock v. *Bartels*, 84 L. Ed. (U. S.) 154.

(9) As set out above that the debtor made an offer to get a loan. That the attorney of the creditor was present at the creditor's meeting and did not raise any such a question and later filed two petitions to dismiss the proceedings and thereby waived any irregularity in the offer, and that the creditor never raised the question in the District Court, in the Court of Appeals and in the prior appeal of this case to the Supreme Court, and never did raise it until

July 22, 1938, three years, seven months and 10 days after the first creditor's meeting on December 12, 1934. It is absurd to contend that it could wait all of that time to raise it. Like "Rip Van Winkle" it was too slow in waking up.

(10) The alleged finding of the court that the debtor said he would not turn over the rent until the Act was held valid amounts to nothing as it has been shown above he did turn over all of the rent except what it took to save the dwelling house. This Act provides that the rent shall first be applied to the payment of the taxes and "upkeep of the property".

By not contesting it, the creditor has admitted the repairs were absolutely necessary to put on the new roof to keep it from rotting down and to give shelter for the debtor and his family. This contention is so devoid of merit that it shows it is another evidence of the purpose of the creditor to defeat this law.

The Court of Appeals had no right to hold that it was any reason which authorized it to approve the action of the District Court in ordering this land sold at public auction. Hence, the decision is in conflict with the purpose of this Act and with the decisions of this Court in the *Bartels* case and in the former appeal of the case at bar. And with common sense and reason, which stand as a guide in the construction of all legislative acts.

(11) Besides this in a conflict between the demand of the debtor to redeem his home at its value (he never could rehabilitate on the basis of $16,000.00 for $6,000.00 worth of land) and the demand of the creditor to have it ordered sold, with the right to the creditor to bid $16,000.00 at the sale, the court should have held the latter subordinate to the right to redeem and not allowed the creditor to defeat rehabilitation in that way. The court should have given

the debtor the preference and disregarded the second proviso of paragraph (3) of subsection (s) as void and of no effect and not allowed it to be used to defeat the right given in the first two clauses of said paragraph.

This construction of the Act is in conflict with the purpose of Congress in enacting it and it conflicts with the decision of the Court of Appeals of the 6th Circuit in the *Gray* case, with the decision of this Court in the former appeal of this the case at bar and brought it in conflict with other decisions of this Supreme Court and the statement of all of the standard authors on statutory construction, all of which hold that when an Act of Congress clearly gives a right, that right cannot be taken away by a later conflicting clause and that in construing such an Act the courts are authorized to enforce the right first given notwithstanding the conflicting clause. It is not to be presumed that Congress would grant a right in one breath and in the next stultify itself by taking it away.

(12) The finding of the Court of Appeals to the effect that the failure to pay the principal of the debt, interest, taxes, and that the improvement became out of repair, did not authorize it to end the stay, take the land from the debtor and order it sold at public auction and allow the creditor to bid $16,000.00 for $6,000.00 worth of land. This was perverting the Act and using it to lose his land instead of saving it. There is no provision in this Act which allows the court to forfeit the land for this last-named reason or for any of the other alleged reasons in said finding, as set out above and hence the decision of the Court of Appeals conflicts with the decision of this Court in the *Bartels* case.

John Hancock v. *Bartels*, 84 L. Ed. 154.

(13) To show that the Court of Appeals based its judgment on the finding that there was no hope that the debtor could rehabilitate himself, it quoted finding No. 23 (R.

56) in the opinion thus: "There is no evidence upon which may be based a reasonable hope or expectation of debtor's financial rehabilitation" (R. 156).

Did it ever occur to the court that in refusing to allow the debtor to redeem at the appraised value and requiring him to pay $16,000.00 for $6,000.00 worth of land that it was the one who was taking away all hope of financial rehabilitation? At that time and prior thereto the inferior Federal courts had been defeating this Act by following Footnote 6 in Justice Brandeis' opinion in (Va.) *Wright* v. *Vinton Branch, etc.*, 300 U. S. 440-462. Chief Justice Hughes in the *Bartels* case was confronted with that decision, disapproved the same and excluded it as *obiter dictum* and held that this Act did not contain any provision for a dismissal because of the absence of a "reasonable probability of the financial rehabilitation of the debtor."

Hence, the decision of the Court of Appeals is in direct conflict with decision of this Court on the same point in said *Bartels* case.

John Hancock v. *Bartels*, 84 L. Ed. 154.

(14) This decision of the Court of Appeals in refusing to order the real estate appraised and in refusing to allow the debtor to redeem it at its real value of $6,000.00 is in conflict with the decision of the Supreme Court in the opinion in the former appeal of this cause in this:

(a) That on May 31, 1938, this Court in *Wright* v. *Union Central Life Insurance Company*, 304 U. S. 502-518 (82 L. Ed. 1490, 1499), held: "The right of Congress to legislate on the subject of bankruptcies is granted by the Constitution in general terms.": "The congress should have power * * * to establish * * * uniform laws on the subject of bankruptcies throughout the United States (Art. 1, Sec. 8, Clause 4)." To this specific grant there must be added the powers of the general grant of clause 18: "To

make all laws which shall be necessary and proper for carrying into execution the foregoing powers." "The subject of bankruptcies is incapable of final definition."

(2) This Court further held in that case: "If the argument is that Congress has no power to alter property rights because the regulation of rights in property is a matter reserved to the States, it is futile."

"Bankruptcy proceedings constantly modify and affect the property rights established by the State law. A familiar instance is the invalidation of transfers working a preference, though valid under State law when made." "It (Court of Bankruptcy) may enjoin like action by a mortgagee which would defeat the purpose of section 75, subsection (s) to effect rehabilitation of the farmer mortgagor" (*Ibid.* 1501).

This Court further held: "The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh" (*Ibid.* 1499).

And "By the Act of March 3, 1933, Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies" (*Ibid.* 1500).

This Court also held the present section 75 and its amended subsection (s) of August 28, 1935, do not violate the 6th amendment, the contract clause, or the 14th amendment of the Constitution (*Ibid.* 1499-1500).

Also, that the "reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order (*Ibid.* 1501).

Also that Congress had the power to extend the period of redemption as provided in section 75 (n) (*Ibid.* 1501).

Also that "Property rights do not gain any absolute in-

violability in the Bankruptcy Court because created by State law."

(b) The Supreme Court in *Norman* v. *Baltimore,* February 18, 1935, 294 U. S. 240-316 and 79 L. Ed. 885 (900) classed this power over the subject of bankruptcies with the other great powers of Congress "to coin money, regulate the value thereof," to declare war, pass non-intercourse Acts or an embargo, which may operate seriously upon existing contracts.

That in addition to the above the Circuit Court of Appeals for the 6th Circuit in *Gray* v. *Union Joint Stock Land Bank,* 105 F. (2d) 275 (277-278), in construing this remedial Act on June 28, 1939 held:

> "Section 75 was intended to enable insolvent farm-debtors or those unable to meet their obligations as they matured to retain control of their property on turning over to their creditors its fair and reasonable market value in either money or its equivalent." • • • "The lien debts are worth no more than the value of the property and any deficiency would be a dischargeable debt. It therefore follows that the lien creditor loses nothing so long as his debt is made secure to the extent of the value of the property" (p. 278).

While on the other hand the United States Circuit Court of Appeals for the Seventh Circuit in the case at Bar in 108 F. (2d) 559 has not followed but departed from this sound law in passing on the same question as discussed above and did not follow said decision in said *Wright* case or said decision of the Circuit Court of Appeals in the 6th Circuit and the other authorities cited but has departed therefrom and held in substance.

That the debtor's request to redeem the land was denied at its fixed value of less than $6,000.00. That the creditor's demand that the land be sold at public auction with the

right to bid its debt at said sale and thereby make rehabilitation impossible defeated the purpose of Congress in passing said remedial Act.

That the debtor should not be required to pay $16,000.00 for less than $6,000.00 worth of land before he could redeem. If enforced he will lose his home and be deprived of the benefits of this Act.

(15) This decision of the Court of Appeals conflicts with other decisions of this Court and all of the authors, of the proper rule of construction to be applied to this Act.

"The intent of the lawgiver is the law."

> "The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature, apparent by the statute and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will if possible, be so read to conform to the spirit of the Act."
>
> Lewis' Sutherland Statutory Construction, Vol. 2 (2d), sec. 376 (322), p. 721.

The Court of Appeals erred in giving the Act a literal construction instead of a liberal one.

(16) In doing that the District Court and the Court of Appeals should have held the alleged right to demand a public sale, and bid the amount of its debt, subordinate to the right to redeem and that as a Court of Equity it would now allow the creditor to defeat rehabilitation and the debtor's right to save his home, by demanding that he pay $16,000.00 for land that was only worth $6,000.00.

The other cases and authors on construction holding that where a right has been given in a statute that it cannot be taken away by a subsequent conflicting clause and that in construing it the Courts are required to disregard the con-

flicting clause so as to carry out the intent of the Legislature.

If that is not the law then hundreds of thousands of "distressed farmer-debtors" will be driven from their homes, as helpless as lambs, and go down the lane for the last time and turn their eyes from the homes of their ancestors. It cannot be that that is the law. No, it never should be and never will be.

Wherefore your petitioner prays that a Writ of Certiorari be issued under the seal of this Court in this cause, directed to the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, commanding it to certify and transmit the original record in said Court to this Court, to the end that said decision may be reviewed and determined by this Court as provided by the laws of the United States. And that said decision and judgment of said Court of Appeals in this cause be in all things reversed and with directions to allow this land to be administered in bankruptcy as Congress intended, and for such other relief as to this Court may seem proper in the premises.

That the petitioner be allowed to file the original record and typewritten transcript of the proceedings in said Court and a typewritten copy of his petition for the Writ and brief in support thereof and that said petition and affidavit for leave to appeal as a poor person be docketed and heard in this Court on said Record and transcript, and also be granted.

Dated this —— day of April, 1940.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana;
WM. LEMKE,
Fargo, N. Dakota,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT,

Petitioner,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, WILLIAM D. REMMELL, TRUSTEE

PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable Charles Evans Hughes, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

I

Opinion of the Court.

The opinion of the Court of Appeals is in the Record, pages 153-157 inclusive. It is reported in 108 F. (2d) 361-363 (Pamphlet).

In substance the Court of Appeals refused to allow the debtor to redeem his home at its present undisputed value of $6000.00, and to discharge him of the debt above said sum.

That it forfeited the land without any cause provided for in the Act of August 28, 1935 and ordered it sold at public auction and allowed the creditor to bid the whole amount of its debt of $16,000.00 at said sale. That it is as plain as the "Noon day Sun", that such an absurd order requiring the debtor to pay $16,000.00 for $6000.00 worth of land before he could redeem, made it impossible for him to redeem or be rehabilitated and totally deprived him of the benefits of said Act and made the law a sham and a farce and no law at all in all cases where the debt exceeded the value of the land in any substantial amount.

The mere statement of such a proposition should deceive no one. It is such a shock to the conscience as to condemn and refute itself. This Court has condemned such a construction of this Act in the opinion in the previous appeal of this cause. It has in effect condemned it in the recent *Bartels* case.

Congress in enacting subsection (s) August 28, 1935 meant to give relief to farmers in the condition the debtor is in here. In other words it would be unreasonable to presume that Congress intended that this Act should apply only to cases where the debt was less than the value of the land and did not intend to apply it where the debt is $16,000.00 and the land only worth $6000.00.

This Court in the recent *Kalb* case, January 2, 1940, quoted the purpose of the Act from the language of the report of the Judiciary Committee of the House as follows:

> "And that the benefits of the Act should extend to the farmer, prior to confirmation of sale, during the period of redemption, and during a moratorium; and that no proceedings after the filing of the petition should be instituted, or if instituted prior to the filing of the petition, should not be maintained, in any Court or otherwise." * * * "Congress set up in the Act an exclusive and easily accessible statutory means

for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal Court litigation." "To this end, a referee or Conciliation Commissioner was provided for every county in which fifteen prospective farmer-debtors requested an appointment; and express provision was made that these Commissioners should 'upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.' In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved—after filing a petition for composition and extension—of the necessity of litigation elsewhere and its consequent expense."

Kalb case.

Under this language, it is clear that when the creditor filed its petition herein the District Court should have summarily given the debtor his right to redeem the land at the appraisement and dismissed the creditor's petition and restrained it from taking any further action to defeat the purpose of Congress to rehabilitate him.

Kalb case, 84 L. Ed. 281;
Previous *Wright* case, 82 L. Ed. 1490-1501.

A few decisions like that would have forced these Loan Companies to have some respect for the laws of Congress and the decisions of this Court and would have saved hundreds of thousands of farms taken from the owners without right.

The creditor here has paid no attention to what Congress intended by this Act. The record here will show it has harassed him with intense litigation since October 29, 1934, in the District Court, the Court of Appeals and in this Court on the prior appeal of this case. Then when the

case came back to the District Court it commenced over again with the petition filed herein in July, 1938. It has fought in the District Court, in the Court of Appeals and is now resisting his petition in this Court for a writ of certiorari.

II.

Jurisdiction of This Court.

(1) The final order denying the petition for rehearing was entered, December 21, 1939, and the time ran from that date. The record in this Court shows that the petition for the writ was filed in time.

(2) Section 240 (a) of the Act of May 13, 1925, defining the jurisdiction of the Supreme Court provides that in any case in a Circuit Court of Appeals it shall be competent for the Supreme Court of the United States upon the petition of any party thereto to require by certiorari that the cause be certified to the Supreme Court. Subsection 8 (a) of said section 240 provides that application for said writ may be filed within three months after the entry of judgment and that for good cause said time may be extended not exceeding 60 days by a Justice of said court.

(3) Notwithstanding these statutory provisions a review on writ of certiorari is still a matter of sound judicial discretion and will be granted where there are special and important reasons therefor.

Paragraph 5, Rule 38, Supreme Court, pp. 31-32.

(4) The appellant contends that the errors of the Court of Appeals in this cause set out above namely:

(a) That said decisions as set out above are in conflict with said decision in the *Gray* case in the Sixth Circuit Court of Appeals.

(b) That said decisions are in conflict with the decision of the Supreme Court in the *Wright* case.

(c) That they have decided important questions of general Federal law in a way probably untenable and in conflict with said Act of Congress and the weight of authority.

(d) That they have decided an important question of Federal law which has not been directly settled by this Court but which should be settled by it.

(e) That it has decided a Federal question or statute in a way in conflict with the applicable decisions of this Court.

(f) That it has so far departed from the accepted and usual course of Federal judicial proceedings in construing a Federal statute as to call for an exercise of this Court's power of supervision over the decisions of said inferior Federal courts.

(g) That these questions in the case at bar are of general public importance and this erroneous construction and application of this Act of Congress, should be settled by this Court.

(h) That said decisions of said Courts of Appeals did not follow said remedial Act of Congress and the applicable decision of this Court in said *Wright* case, which reasons brings the case at bar within the provisions of said Rule 38 paragraph (5) (b) and (c).

Besides this, the appellant in his reasons has set out the great public importance of the questions erroneously decided by said Court of Appeals in this cause and the Supreme Court wisely recognized that as a reason for granting certiorari in *John Hancock* v. *Bartels*, December 4, 1939.

That there is no other way to settle and eliminate this conflict and confusion in the decisions of said inferior courts,

and this important question of right and justice and uphold the purposes of Congress in enacting this humane Act to save the farm homes of our great country, except for this Court to exercise its wise power of supervision to bring about uniformity in the decisions on the proper construction and meaning of this Act of Congress—the supreme law of the land.

III.

Statement of the Case.

This has been done in the preceding petition herein, page 5 to page 31 inclusive, and it is not necessary to repeat it again.

IV.

Specification of Errors.

Petitioner's assignment of errors in the court below is found in Record 60 to 74 inclusive and are in substance as follows:

1-a. The court erred in overruling the appellant's motion to dismiss the creditor's petition filed July 22, 1938, on which the present proceedings are based because it states no grounds for dismissing the proceedings in bankruptcy herein.

1-c. That it shows on its face that it is wholly without any equity, merit or right.

1-d. That it shows to allow it would deprive the debtor of the right to save his home under Act of August 28, 1935.

1-f. That said petition fails to show that the debtor has violated any Federal Bankruptcy Act.

1-h. That under said subsection (s) said rents are under the control of the District Court and it is not shown that

the creditor took any steps to correct the matters complained of in its petition (R. 61-62).

1-i. That said matters complained of in said petition are not enumerated as causes in said Act for the dismissal of said proceedings.

1-j. That said creditor does not show in said petition that said debtor cannot refinance himself on the basis of the appraised value of the (real) estate with the stay of three years and March 4, 1940.

1-k. That said petition shows that said creditor by its litigation against the debtor has prevented him from refinancing himself on the basis of the present value of said land.

1-l. That said petition does not state facts which would authorize the court to deprive the debtor of the benefits of said Bankruptcy Act (R. 62-63).

3. That (special) finding No. 3 to the effect that the debtor did not make any offer of composition (at the first creditor's meeting) is not sustained by sufficient evidence.

4. That said finding No. 3 is contrary to law as the evidence showed that Roscoe D. Wheat, Counsel for said creditor was present at said meeting and heard all of the proceedings and did not object or raise any question about the lack of an offer (R. 63).

4-e. f. That after said meeting on January 2, 1936 said creditor appeared in said court in said cause and filed a motion to dismiss said proceedings and release said land and stated as ground that said subsection (s) of August 28, 1935, was unconstitutional. That it did not make any objection that said court did not have jurisdiction of said cause (R. 64).

4-h. That said Conciliation Commissioner struck out said land and said ruling was reviewed in said District Court and said creditor did not raise the question that no offer of composition had been made at said meeting (R. 64).

4-l. That said cause was appealed to the Circuit Court of Appeals and said creditor appeared and filed briefs and made oral argument and did not raise any question that no offer was made at said meeting.

4-n. That said cause was appealed to the Federal Supreme Court and no such question was raised therein.

That therefore said District Court should have found that said creditor had repeatedly waived any irregularity in said offer at said meeting (R. 66).

5. That the finding that the debtor did not turn over the rent is not sustained by sufficient evidence.

6. That the evidence shows the debtor properly used part of the rent to make necessary repairs on the dwelling house.

7. That the record shows the creditor repudiated this remedial Act of Congress in the State and Federal courts on the ground it was void and that it has not accepted any of said rent. It should not be allowed to "blow hot and cold". It should not be allowed to use it (this law) to deprive him (debtor) of his home. That in this Court of Equity a litigant must come into it showing good conduct before it can invoke its aid against others.

8. This Act (Subsection (s)) does not provide that the failure to pay principal, interest (on debt) taxes does not authorize the court to end the stay and deprive the debtor of the right to refinance and redeem his land at its appraised value, as to the taxes they are paid out of the rent (R. 67).

9. The fact that the buildings were allowed to become out of repair is no ground to end the stay. The remedy was to have them repaired out of the rents.

12. The fact that the income from the land was from $2,000.00 to $200.00 was no cause to end the stay and deprive the debtor of his right to save his home.

13. The fact that the debtor could not pay more than $6,000.00 for the land did not deprive him of the benefits of the Act and it was gross error to require him to pay $15,000.00 ($16,000.00) to redeem $6,000.00 worth of land (R. 67).

15. The finding that the debtor had not delivered the crops to the trustee is not sustained by sufficient evidence.

16. The finding that the debtor's income is insufficient to liquidate the debt, interest and taxes was no reason for ending the stay.

17. The court should have found that the debtor could redeem the land at $6,000.00.

18. The court should have found that this (the Supreme) Court had found that this land was in bankruptcy, and that hence he was entitled to the benefits of this Act (R. 68).

21. The court erred in this:

Instead of allowing the debtor to redeem at its present value, it ordered it sold at public auction and gave the creditor the right to bid its debt of over $15,000.00 ($16,000.00) and thereby made it impossible for him to redeem (no one could pay $16,000.00 for $6,000.00 worth of land) (R. 69).

22. That the court erred in this:

In ordering that the debtor could not redeem unless he paid the whole debt.

24. That the court should have found the creditor gained no title to the land by the foreclosure proceedings and sheriff's sale and that said facts deprived him of his rights under said Acts of Congress (R. 70).

29. That the finding of the court is contrary to law in this:

The debtor demanded the right to redeem by paying the value of the land, into court within the period of redemption and that the court order it turned over to him "free and clear" of the mortgage debt and the court erred in not granting this (R. 71).

30. That the Supreme Court in the former appeal of this cause held the land was in bankruptcy. That said judgment is final and binds the creditor and it had no right to afterwards file the petition herein including the same facts and that the facts herein could have been included in said former proceedings in the District Court and hence are considered litigated and settled in said former appeal, and cannot relitigate said questions and the District Court should have dismissed said petition and not allowed said creditor to harass the debtor with further litigation (R. 71-73).

34. That the court erred in finding that the debtor was beyond all hope of rehabilitation.

35. That there are other errors so manifest that this Court should notice them in considering this appeal (R. 74).

V.

THE ARGUMENT.

Summary showing points and authorities relied upon:

Point 1. The foreclosure of the mortgage and sale by the sheriff and deed to the creditor was utterly void and did not deprive the debtor of the benefits of the Bankruptcy Act.

Kalb v. *Feuerstein*, 84 L. Ed. (U. S.) 281.

Point 2. The finding that the debtor has made no offer went to his good faith and this Court has held that that did not authorize the court to terminate the proceedings. No formal offer was required. The filing of the petition gave the court jurisdiction over the property and even though no formal offer was made the court did not lose its control over it but had the power to proceed to administer the estate and did not deprive the debtor of the benefits of the Act.

Bartels v. *John Hancock,* 100 F. (2d) 813 (815-816);
John Hancock v. *Bartels,* 84 L. Ed. (U. S.) 154.

Point 3. The fact that the counsel of the creditor was present at the meeting and made no objection at that time was a waiver of the form in which it was made. To be silent on that question and never raise it for 3 years and 7 months after the creditor's meeting was too late. Self-Evident.

Point 4. The alleged statement that the debtor said he would not pay the rent until the court decided whether the Act was valid was denied amounts to nothing because it was shown and not seriously disputed that he had paid all of the crop rent, except the part used to make necessary repairs of the house. It was not denied by the creditor but that the repairs were necessary and hence increased the value of the land.

Point 5. Besides this in a conflict by the creditor demanding a sale for non-payment of rent and the right of the debtor to redeem the land, it was the duty of the court to give the latter a preference over the former, as the court could adjust the rent in some other way than forfeiting the land. Forfeitures are odious and will not be resorted to where there is a more reasonable way to avoid them.

Point 6. The finding that the debtor had not paid the principal, interest, taxes and that the improvements became

out of repair did not forfeit the land. There is no provision of that kind in the Act and the courts have no power to add causes to the law. This Court so held in effect.

John Hancock v. *Bartels,* 84 L. Ed. 154.

Point 7. The finding that there was no hope that the debtor could rehabilitate himself was rejected by this Court in the *Bartels* case and the decision in *Wright* v. *Vinton Branch, etc.,* so holding was overruled as *obiter dictum.*

John Hancock v. *Bartels,* 84 L. Ed. 154.

Point 8. The Act of Congress upon which this right is based is as follows:

> "At the end of three years—the debtor may pay into Court the amount of the appraisal." (And thereby redeem the land.)
>
> "That * * * upon the request of the Debtor, the Court shall cause a re-appraisal of the Debtor's property, or in its discretion set a date—and after such hearing fix the value of the property * * *, and the Debtor shall then pay the value so arrived at into Court * * * and thereupon the Court shall by an order, turn over full possession and title of said property, free and clear of encumbrances (mortgage debt) to the Debtor."
>
> 11 U. S. C. A. 203 (3).

Point 9. The following support this view: That the second proviso of Section 75 (s) (3) is void and should be disregarded.

23 American and English Enc. Law, pp. 317-318. Citing many cases.

23 American and English Enc. Law, p. 362. Citing many cases.

23 American and English Enc. Law, p. 412. Citing many cases.

23 American and English Enc. Law, p. 419. Citing many cases.

50 *Corpus Juris* pp. 999-1000. Citing many cases.

23 American and English Enc. Law, p. 420. Citing many cases.

Wilson v. *Mason,* Cranch. 45, 2 L. Ed. 29;

Huidekoper v. *Douglass,* 3 Cranch. 1, 2 L. Ed. 347;

Peck v. *Jennes,* 12 L. Ed. 841;

Rice v. *Minnesota & N. W. R. Co.,* 1 Black. 358, 17 L. Ed. 147;

Bernier v. *Bernier,* 147 U. S. 242, 13 Sup. Ct. Rep. 244, 37 L. Ed. 152;

Perrine v. *Chesapeake & D. Canal Co.,* 9 How. 172, 13 L. Ed. 92;

Lewis' Sutherland Statutory Construction, Vol. 2 (2d) 376 (322) p. 721:

"The more literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature, apparent by the statute and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will if possible, be so read to conform to the spirit of the Act."

Cites *Lime City* v. *Black,* 136 Ind. 544.

Citing: *Pierce* v. *Van Dusen,* 78 Fed. 693. Same p. 726.

Lewis' Sutherland Statutory Construction, Vol. 2, Sec. 488 (322) p. 910.

Blackstone (87).

Blackstone again (91).

59 *Corpus Juris* 948-952. Many cases cited.

23 American and English Enc. Law, p. 420. Citing many cases.

Point 10: The giving of this right excludes everything which would stand in the way of that right.

Point 11. This is a remedial act and must be construed in that light to carry out the intent of Congress in enacting a law to save farm homes.

Point 12. The second proviso in said paragraph (3) purporting to give the creditor the arbitrary right to demand a termination of the stay and a sale of the land with the right to bid the amount of its debt, taken literally, would defeat the whole purpose of Congress in passing this act. It is a "joker". It would defeat rehabilitation and make the first clause and first proviso a sham and a farce and make them no law at all. Hence, it was the duty of the District and the Court of Appeals to disregard it, and hold it subordinate to the right to redeem and that the right to redeem had the preference and could not be defeated by the second proviso. When a clause in an act is so repugnant and absurd as to defeat the whole purpose of the Act it is void and should be disregarded, and not considered except as a last resort only when all other remedies failed to rehabilitate the debtor at the termination of the period of redemption. The relief of farmer-debtors was the paramount object of Congress in passing this Act and this proviso must yield and give way to give the right for farmer-debtors to save their homes on the basis of their present value and did not intend in the next the absurdity of taking that right away from them and allowing the creditor to arbitrarily take their homes without giving any reason and turn them and their families out on the public highways.

Point 13. In support of appellant's contention we cite the following rule of construction as laid down by a standard author and of this and other Courts:

(a) "As the intention of the legislature embodied in a statute, is the law, the fundamental rule of construction, to which all others, are subordinate, is that

the Court shall, by all aids available, ascertain and give effect to the intention of the maker.''

59 *Corpus Juris* 948-952. Many cases cited.

Point 14. Congress in the exercise of its powers over the subject of bankruptcies certainly had the power to bring the mortgage debt down to the real value of the security. In the case at bar to bring the debt of $16,000.00 down to $6,000.00, the real value of the security. This has been the great contest and struggle in the courts since section 75 of the Bankruptcy Act of March 3, 1933 was amended by adding subsection (s) of August 28, 1935. If it has not that power then there is no remedy for the insolvent debtor in a case like the one at bar but to close his eyes and allow the debtor and the inferior Federal courts to confiscate his home and turn him and his family from the place which has become as dear to them as ''light and life''.

Point 15. That this Court meant to hold that Congress had the power to bring the debt down to save the debtor's home and that it exercised that power in adding subsection (s) to section 75 on August 28, 1935 and extended it to March 4, 1940 (11 U. S. C. A. 203 (s)) is conclusively shown in the statements of this Court in *Wright* v. *Union Central Life Insurance Company*, 304 U. S. 502-518 (82 L. Ed. 1490-1502) as follows:

(a) ''The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh.'' Ibid 1499.

(b) ''By the Act of March 3, 1933 Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies.'' *Ibid.* 1500.

(c) "If the argument is that Congress has no power to alter property rights because the regulation of rights in property is a matter reserved to the States, it is futile."

"Bankruptcy proceedings constantly modify and affect the property rights established by the State law. A familiar instance is the invalidation of transfers working a preference, though valid under State law when made." "It (Court of Bankruptcy) may enjoin like action by a mortgagee which would defeat the purposes of (section 75) subsection (s) to effect rehabilitation of the farmer mortgagor." *Ibid.* 1501.

(d) "Property rights do not gain any absolute inviolability in the bankruptcy court because created by State law." *Ibid.* 1502.

Point 16. It is plain that subsection (s) added to section 75 by the Act of August 28, 1935, is an Act introducing a new feature in bankruptcy. Previous Acts were for the purpose of selling the debtor's land and dividing the proceeds among the creditors according to their priority and discharge the balance of his debts. This new Act is intended to not sell the distressed and wrecked farmer's land, but to allow him to keep it and reorganize himself on the basis of the appraised value thereof and discharge him of the debt above that value.

Congress not only intended to save his home but to give him and his family new hope and a new vision of life. Hence, the Supreme Court in *Wright* v. *Mountain Trust*, 300 U. S. 440-470 (81 L. Ed. 736) rightly stated:

> "The farmer's proceedings in bankruptcy for rehabilitation resembles that of a corporation for reorganization."
>
> Citing 11 U. S. C. A. Sec. 207 (c).

The court meant to compare it to the proceedings under Sec. 77 which provides for the reorganization of railroads and 77 B. providing for the reorganization of other corporations.

These Acts provide in substance for a readjustment of debts by reducing them to somewhat correspond to the value of their property and other assets and by adopting a plant of reorganization by which the corporation retains its property and continues to operate it.

Many railroads and factories and other industries have been reorganized under these Acts and this legislation has been upheld by the courts.

Point 17. If such debts can be reduced and the institution retain its property why cannot the farmer's mortgage debt be brought down to the value of the land and continue to operate it by allowing him to take the latter at its appraised value and have the balance of his debt discharged. Farming is the basic industry and is greater than any other. This Court has thrown a great light on this purpose when it wisely said in the recent *Kalb* case:

> "Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation."
>
> *Kalb* case, 84 L. Ed. 154.

Point 18. That is what this Court meant by the language quoted from the *Wright* case above. It said Congress deliberately undertook to do two things:

First: To rehabilitate the farmer—put him on his feet. Allow him to start over again. In the case at bar the farmer only had $6000.00 of property and $16,000.00 of mortgage debt. He could not be rehabilitated by requiring him to pay

$16,000.00 for $6000.00 worth of land. On that absurd theory he was gone and could not "start afresh." He could not pay $16,000.00 of debt with $6000.00 worth of assets.

Hence, he could not be rehabilitated except in one way:

To allow him to take the land at its appraised value of $6000.00 and discharge the balance. The court did not use the word rehabilitate as a meaningless term or in an idle way. It intended to solemnly say that if the debt is double the value of the land the debtor should not be turned away and denied relief but that the court must construe this Act to bring the debt down to the value of the land, so that he could be rehabilitated and so that the purpose of Congress could be carried out.

What did the court mean when it said that Congress intended the debtor should be discharged of his indebtedness and the previous language in substance that the object of this legislation was to relieve the debtor of his oppressive indebtedness and permit him to "start afresh". In addition to the mental agony, the sleepless nights he had the weight of this debt hanging like a "millstone" about his neck. As sure as the "night, the day" Congress intended to lift this burden and give him new life. Hence, it is plain he could not be rehabilitated except on the basis of the value of the security and could not "start afresh" except by the court relieving him of the balance of this "oppressive indebtedness."

Point 19. The wisdom, desirability and necessity for such an Act to bring this great power down to meet new conditions and this new "Crisis" were considerations for Congress and not the courts.

Supreme Court—*Kalb* case, January 2, 1940.

Point 20. The Judiciary Committee of the Senate made a report on S. 1935 to amend the old subsection, Section 75 (s) and in it stated:

"The intent of Congress was and is that the 3 years (extended to March 4, 1940) (part in parenthesis our own) not to pay all of his debts but to pay the value of the property." "Very few bankrupts are able to pay all their debts."

Senate Report, Aug. 1, 1939, page 2.

Point 21. That Congress is the Judge of the means it will employ to carry out its Constitutional powers, has become so well settled by the decisions of this great Court that no citations are necessary "He who runs may read."

Point 22. It is plain from the decisions of this Court and standard authors as set out above that in the construction of a statute the cardinal rule is to so construe it as to carry out the intent of the Legislature and that a clause therein which results in an absurdity or taken literally would defeat that intent is void and should be disregarded and not allowed to defeat the plain purpose of the Act.

"The intent of the lawgiver is the law." To determine that intent is for this Court. It is a great responsibility.

Point 23. Everyone knew and understood that the purpose of Congress in adding subsection (s) to section 75 was to save hundreds of thousands of farm homes of those engaged in the basic industry of the country.

This Court rightly described the "distressed farmers who as victims of a general economic depression were without means to engage in formal Court litigation" (*Kalb* case).

That it never did intend by this Act to allow anything to stand in the way of carrying out that plan and the Circuit Court of Appeals should have construed this Act in that light in this case.

It intended to cure the evil or mischief of the old law of allowing the creditors to demand a sale of the land and then the farce of allowing it to bid the whole of his half

dead debt at the sale and thereby make it utterly impossible for the debtor to redeem and the result was that the debtor was driven from his home and from his own "vine and fig tree" out on the public highways without hope.

The sense of justice and conscience is shocked at such an inhuman construction of this remedial Act in a Court of Equity.

Perhaps his ancestors had lived on this home and plantation for generations and it had become as dear as "light and life" to them. They were ready and could finance it at its present value, but no, the creditor demanded the whole debt. It demanded the last dollar of the debt and thereby confiscated this ancestral plantation, described as no other hath—"A charm from the skies seems to hallow us there, which seek through the world is not met with elsewhere."

Point 24. This act was passed to save homes. The stability and perpetuity of our country depends on American homes. The men and women of America will decay and lose their spirit of independence and ideals and our institutions will dwindle away and die if American homes are not restored and protected. This is not radicalism. It is conservatism.

Point 25. When the Court of Appeals for the Sixth Circuit came to interpret and construe the meaning of this remedial Act it wisely said:

> "Section 75 was intended to enable insolvent farm-debtors or those unable to meet their obligations as they matured to retain control of their property on turning over to their creditors its fair and reasonable market value in either money or its equivalent." * * *
> "The lien debts are worth no more than the value of the property and any deficiency would be a dischargeable debt. It therefore follows that the lien creditor

loses nothing so long as his debt is made secure to the extent of the value of the property."

Gray v. *Union Joint Stock Land Bank*, 105 F. (2d) p. 278.

Point 26. This language excludes the idea that the creditor could stand in the way of the great relief intended by this Act by demanding an end of the stay and a public sale and by bidding its whole debt and thereby defeat and make rehabilitation impossible and make this Act a sham and a farce and no law at all.

Point 27. The debtor was not to blame for this fall in the value of the security and in a Court of Bankruptcy why should he bear all of the loss?

The paramount question is shall this Act be construed to restore and save American farm homes. The Court of Appeals seemed to not grasp the great intent of Congress and allowed the District Court to use this Act to take the debtor's home from him.

Point 28. It was utterly impossible for Congress to exercise its great power to reorganize, rehabilitate and help the distressed farmer out of the rut without reducing the creditor's debt and bringing it down to the present value of the security. But in doing that the creditor lost nothing in fact.

The Supreme Court in the first *Wright* case held as to this Act:

"The legislation is designed to aid victims of the general economic depressions."

300 U. S. 440-470;
81 L. Ed. 736 (746);
Kalb case, January 2, 1940.

Point 29. We come now to the Act of March 4, 1938. The plain language of that Act applied it to and extended "all

existing and pending cases'' in any Federal court—until March 4, 1940.

Paragraph (5) of subsection (s) of the previous Act had extended all existing cases for three years. That time was about to expire and section 2 of the Act of March 4, 1938, amended said former paragraph (5) and brought it forward and applied it to all cases pending on March 4, 1938, and by applying it thereby it extended this cause to March 4, 1940. The effect of this was to extend the period of redemption or moratorium until March 4, 1940. To urge that it did not extend all pending cases is absurd. No reason has been given by its opponents or the Court of Appeals in this case why Congress should provide for filing new cases, extend all cases that had been dismissed where the Federal courts had erroneously dismissed them on the ground the Act was unconstitutional and then neglect to extend other pending cases like the one at bar.

This Court held in both of the *Wright* cases that Congress had the power to extend the period of redemption or moratorium and it certainly did so in this Act. To contend otherwise is to disregard the language of the Act and defeat the purpose of this remedial Act. This Act of March 4, 1938, was designed to save ''distressed farmers'' homes and the court should have treated it in that light and should not have given it a strained construction which would defeat the purposes of Congress to save farm homes.

Argument in Support of Said Points.

The statements in the summary, in the reasons for granting the writ and other preceding parts of this brief and the statement of the points and authorities are an argument and any attempt to argue them at length would be largely a repetition.

It is conceded by all that the Constitution cannot be carried out except by legislation.

Legislation makes it a living instrument. Many may cry, Constitution, Constitution, and yet at every opportunity bitterly oppose every law enacted by Congress to carry it out. To oppose the laws enacted by Congress within its power is to oppose the Constitution. Each is the Supreme Law of the Land.

"Grant it is the duty of the Federal Courts to defend the Constitution when the National Legislature transcends its powers, and hold such laws void, yet on the other hand it is their solemn duty to give to the Constitution and the laws of Congress enacted under it, a liberal construction and give to the people who made it and who have preserved it, all of the rights expressly or impliedly granted to them therein. "For the letter killeth but the spirit giveth life." The true rule of interpretation of the Constitution is well expressed by this Court in *Home, etc.*, v. *Blaisdell*, 78 L. Ed. 413 (431). You need look no further.

The Honorable Court of Appeals in this cause did not seem to grasp the purpose of Congress in enacting this law. That above all things it intended to save American farm homes and restore them to proper condition. It intended this Act should be applied to the case at bar. That the Judiciary Committee of the Senate in reporting S. 1935 on August 1, 1939, said:

> "We may state further that many of the district courts and some of the circuit courts of appeals and Supreme Court have given a proper construction of the language in the present act, but we are sorry to note that others have misconstrued it."

There were more inferior Federal courts against than for it.

That it was the duty of said court to construe this Act in that light and apply said Act to this case. Instead of that it erroneously turned away from said purpose and

approved the action of the District Court in depriving the debtor of the benefits of the Act and in terminating the moratorium and taking the land from him and ordering it sold and requiring him to pay double the value of the land, which the court had found he could not do, and thereby utterly defeated the purpose of said remedial Act.

Enough has been said for the present.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers; that this Court should grant said petition for a writ of certiorari herein commanding said Honorable Circuit Court of Appeals of said Circuit to send the record and proceedings in said cause to this Court without delay so that this Court may review and act thereon as of right and according to law and as ought to be done. And the petitioner prays this Court to reverse the order and judgment of said Circuit Court of Appeals, and to grant his petition to prosecute this appeal *in forma pauperis*.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana;
WM. LEMKE,
Fargo, N. Dakota,
Counsel for Petitioner.

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